

NATURE OF THE ACTION

2. The United States seeks civil penalties and an injunction requiring Toa Alta to address the hazardous conditions at the Landfill.

JURISDICTION, VENUE, AND NOTICE

3. This Court has jurisdiction over the subject matter of this action under Sections 7003(a) and (b) of RCRA, 42 U.S.C. § 6973 (a) and (b), and 28 U.S.C. §§ 1331, 1345 and 1355.

4. Venue is proper in this District because the violations occurred and are continuing to occur in this District and Toa Alta is located in this District. 28 U.S.C. §§ 1391(b) and 1395(a).

5. The United States has given notice of this action to Puerto Rico as required by Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

THE DEFENDANT

6. Toa Alta owns the Landfill and has been the owner of the Landfill since approximately 1966.

7. Toa Alta operated the Landfill from 1966 to 1998 and from approximately April 2014 to November 2019. Since November 2019, a third-party contractor has operated the Landfill at the direction of and for the benefit of Toa Alta.

STATUTORY AND REGULATORY BACKGROUND

8. RCRA includes a comprehensive federal program that provides for the regulation of solid waste and hazardous waste. 42 U.S.C. § 6901, *et seq.*

9. “Solid waste” is defined to include garbage, refuse, and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from, aside from certain exclusions, industrial, commercial, mining, and agricultural operations, and community activities. 42 U.S.C. § 6093(27).

10. Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), provides, in pertinent part:

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to human health or the environment, the Administrator may bring a suit on behalf of the United States in the appropriate district court against any person (including ... past or present owner or operator of a treatment, storage or disposal facility) who has contributed or is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation or disposal, to order such person to take such other action as may be necessary, or both. The Administrator may also ... take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

11. Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), provides that any person who fails to comply with any EPA order issued under Section 7003(a) of RCRA may, in a civil action brought by the United States to enforce such order, be fined up to \$5,000 for each day of each violation.

12. The maximum daily civil penalty amount under Section 7003(b) of RCRA has been increased to \$15,352 for violations occurring after November 2, 2015. 40 C.F.R. § 19.4.

GENERAL ALLEGATIONS

THE LANDFILL AND ITS PRESENT CONDITION

13. The Landfill is located off the PR-165 thoroughfare, at Km 8.2, Barrio Contorno, Municipality of Toa Alta, Puerto Rico. The Landfill comprises approximately 32 acres.

14. More than 100 homes and businesses are located within 1,300 feet of the Landfill perimeter, including one home that is approximately 55 feet from the southwest side of the Landfill.

15. Toa Alta has not installed fencing or other controls limiting access to the Landfill by scavengers and others.

16. Toa Alta has disposed of its municipal solid waste at the Landfill since 1966. Toa Alta also accepts municipal solid waste from other municipalities for disposal at the Landfill.

17. Toa Alta constructed and filled the Landfill in four main stages: (a) the initial waste deposit into an approximately 11-acre sinkhole and in an area in the northeast section of the Landfill; (b) an expansion to the northwest of the initial waste deposit; (c) the newer, Southeast Cell; and (d) a combined waste deposit area overlaying the preexisting waste deposit areas.

18. The 11-acre sinkhole area, the northeast section, and the expansion in the northwest portion of the Landfill are not lined at the bottom with an impermeable membrane.

Leachate

19. Approximately 72 inches of rain fall per year in the region in which the Landfill is located.

20. The surface of the Landfill is not capped with a low permeability cover.

21. Like all landfills without low permeability covers, rain that falls on the Landfill surface passes into and through the solid waste mass within the Landfill.

22. Like all landfills without low permeability covers, water passing through the Landfill's waste mass becomes contaminated with harmful constituents that are in the waste, including heavy metals and organic compounds, as well as pathogens, including viruses and microorganisms such as bacteria and protozoan parasites.

23. This contaminated water, or "leachate," is released from the bottom, sides, and "toe" of the Landfill.

24. The Landfill releases an estimated 12 to 20 million gallons of leachate per year.

25. The Southeast Cell was constructed with a membrane liner at the bottom and a leachate collection system that was intended to remove the leachate that is captured by the liner.

26. Waste was first deposited in the Southeast Cell in 2007.

27. Toa Alta ceased operating and maintaining the leachate collection system in approximately 2014.

28. Toa Alta does not remove the leachate captured by the Southeast Cell's liner.

29. Leachate captured by the liner pools on top of the liner, overflows from the edges of the liner, and leaks through the liner.

30. The liner below the Southeast Cell accounts for approximately 15% of the waste disposal area of the Landfill. Leachate generated in the other 85% of the waste disposal area of the Landfill is not captured by any liner.

31. The Landfill is located above a highly permeable member of the Cibao Formation, which is a recharge area for the North Coast Limestone lower aquifer.

32. The North Coast Limestone lower aquifer is part of the North Coast Limestone aquifer system, which also includes an upper aquifer.

33. The North Coast Limestone aquifer system is a large and productive source of groundwater in Puerto Rico.

34. The U.S. Geological Service ("U.S.G.S") has designated the North Coast Limestone aquifer system as a "Principal Aquifer of the United States," i.e., an aquifer that the U.S.G.S. has determined is a regionally extensive aquifer or aquifer system that has the potential to be used as a source of potable water.

35. Groundwater is mostly extracted from the upper aquifer because it is more accessible for drilling and pumping. The groundwater in the upper aquifer has already been extensively contaminated, resulting in numerous well closures since 1987.

36. The lower aquifer is the principal artesian aquifer of the North Coast Limestone aquifer system, is relatively uncontaminated, and its water is potable. Several industrial wells and a few public water supply wells tap the lower aquifer.

37. Leachate released from the Landfill flows to, may permanently contaminate, and endangers the North Coast Limestone lower aquifer.

38. Leachate released from the sides and toe of the Landfill flows to, may contaminate, and endangers the soils and surface waters near the Landfill.

39. Leachate releasing from the sides and toe of the Landfill may endanger the health of people who come into contact with the soils and surface waters contaminated with leachate from the Landfill.

Landfill Side Slopes

40. Some of the Landfill's slopes are steeper than a 3:1 (horizontal to vertical) ratio and some of those slopes are even steeper than a 2:1 ratio.

41. A closure plan prepared for Toa Alta in December 2015 specifies that none of the final Landfill slopes should be steeper than a 3:1 ratio.

42. A Puerto Rico Landfill Capacity Study in April 2018 found that of six slopes at the Landfill measured, two slopes exceeded a 2:1 ratio.

43. Construction drawings for the Southeast Cell prepared in 2006 specified that the base of the Southeast Cell had elevations of between 321 feet mean sea level (MSL) to 344 feet MSL, and that the maximum elevation of the waste pile should be no more than 458 feet MSL.

44. The December 2015 closure plan prepared for the Landfill on Toa Alta's behalf specified an increased maximum height of the Landfill of 541 feet MSL. Under the closure plan, the proposed increased maximum height required the construction of engineered earthen walls.

45. Toa Alta never constructed the engineered earthen walls specified in the 2015 closure plan and the Landfill's height now exceeds 541 feet MSL.

46. Toa Alta has at times not compacted waste on a daily basis.

47. In July 2020, the ponded leachate on the liner in the Southeast Cell was 90 inches deep.

48. The design of the Southeast Cell specified that depth of the ponded leachate must not exceed 12 inches.

49. The risk of slope failure rises with increasing depth of leachate and associated increased quantity of saturated material and water pressure within that material.

50. There has been significant seismic activity in Puerto Rico since December 2019, with earthquakes of 4.7 to 6.4 magnitude.

51. Puerto Rico is at relatively high risk for hurricanes. The U.S. Geological Survey classifies Puerto Rico at the most extreme of the various categories of hurricane risk, with an expectation of more than 60 hurricanes in a 100-year period.

52. The Landfill's steep slopes, the frequent hurricanes and high average rainfall in the area, the seismic activity in the area, the poor compaction of the Landfill mass, the lack of soil cover to reduce rainwater infiltration into the waste mass, the construction of the Landfill above its design height, and the ponded leachate in the Southeast cell, combine to create an increased risk that the Landfill side slopes will collapse, endangering Landfill workers, visitors (including scavengers), and neighbors near the Landfill.

Soil Cover

53. Toa Alta has at various times not covered the day's deposit of waste with soil, thus leaving the daily deposit of waste exposed.

54. Toa Alta has at various times permitted the soil cover that it did apply to be eroded or removed through the effects of rain or wind, thus exposing the underlying solid waste.

55. Toa Alta has also failed to place a soil cover over inactive areas of the Landfill, thus leaving the waste exposed in those areas.

56. Exposed solid waste is a habitat and food source for disease vectors, *i.e.*, rodents, flies, and mosquitoes that are capable of transmitting disease to humans.

57. Application of soil cover to active areas of the landfill and maintenance of a soil cover in inactive areas reduces the habitat and food source of, and is a barrier to, disease vectors.

58. Application of soil cover to active and inactive areas reduces infiltration of rainwater into the Landfill. Less rainwater infiltration results in reduced leachate formation and releases.

59. The lack of soil cover in active and inactive areas of the landfill poses an endangerment to workers, visitors (including scavengers), and neighbors because it exposes them to an increased risk of disease.

THE 2017 ADMINISTRATIVE ORDER

60. Based on inspections of the Landfill in 2016, EPA determined that: (a) the past and present handling of the solid waste at the Landfill may present an imminent and substantial endangerment to public health and the environment; and (b) it was necessary for EPA to issue an administrative order to Toa Alta under Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), requiring it to undertake actions to protect public health and the environment.

61. On June 14, 2017, under its authority under Section 7003(a) of RCRA, EPA issued the 2017 Order to Toa Alta, after affording it an opportunity to comment on and object to

EPA's administrative action. EPA also issued the 2017 Order to former operators at the Landfill including Landfill Technologies of Toa Alta and CMA Environmental, LLC.

62. The 2017 Order required Toa Alta to take appropriate measures to properly operate the Landfill, including: (a) install and maintain provisional stormwater controls; (b) provide daily cover on active waste disposal areas; (c) before September 20, 2017, complete application of intermediate cover on all areas of the Landfill where waste was not currently being deposited on a regular basis; (d) properly manage all collected leachate so as to minimize the release of leachate to the environment by either transporting and disposing or implementing on-site treatment of collected leachate; and (e) install perimeter fencing to prevent access to the Landfill by scavengers and trespassers.

63. The Order also required Toa Alta to permanently cease accepting waste for disposal at the Landfill by December 31, 2017. Upon a request by Toa Alta after Hurricane Maria, EPA extended this deadline to June 30, 2018, subject to the conditions that: (a) Toa Alta avoid any further damage to the Southeast Cell's leachate collection system and related equipment; (b) place no more waste in the Southeast Cell; (c) place no waste on, or within five meters of, the top of all existing slopes; and (d) place no waste beyond the perimeter where waste had been disposed of as of June 19, 2017. EPA specified that if any of these conditions could not be met, Toa Alta could not dispose of any waste at the Landfill after the original December 31, 2017 deadline.

64. Toa Alta did not satisfy the conditions for the extension, and therefore the deadline for Toa Alta to cease disposing of waste at the Landfill remained December 31, 2017.

CLAIMS OF RELIEF

FIRST CLAIM: INJUNCTIVE RELIEF UNDER SECTION 7003(A) OF RCRA

65. Toa Alta through its Landfill is enabling the release of contaminated leachate, creating an increased risk of slope collapse, and creating risks caused by the lack of daily and intermediate cover including the spread of disease.

66. Because of these conditions and risks, Toa Alta may endanger: (a) the health and safety of workers and visitors (including scavengers) at the Landfill and neighbors near the Landfill; (b) the North Coast Limestone lower aquifer and the health of persons who do or will drink water drawn from that aquifer; (c) the soils and surface waters near the Landfill and the health of persons who have or will come into contact with those soils and surface waters.

67. These conditions may present an imminent and substantial endangerment to public health or the environment.

68. Toa Alta is liable, under Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), for injunctive relief requiring it to take such action as is necessary to abate the conditions that may endanger public health and the environment.

SECOND CLAIM: CIVIL PENALTIES UNDER 7003(B) OF RCRA

69. Toa Alta has violated the 2017 Order by: (a) disposing of waste at the Landfill after the December 31, 2017 deadline; (b) failing to install provisional stormwater controls; (c) failing to provide daily cover on active waste disposal areas; (d) failing to provide intermediate cover on areas of the Landfill where waste is not being disposed on a regular basis; (e) failing to properly manage all collected leachate so as to minimize the release of leachate to the environment by either transporting and disposing or implementing on-site treatment of

collected leachate; and (f) failing to install perimeter fencing to prevent access to the Landfill by scavengers and trespassers.

70. Toa Alta is liable for civil penalties under Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), for each day of each violation of the 2017 Order.

PRAYER FOR RELIEF

WHEREFORE, the United States of America respectfully requests that the Court grant the following relief:

- a. Order Toa Alta to permanently cease disposing of solid waste at the Landfill;
- b. Order Toa Alta to implement injunctive relief that addresses the imminent and substantial endangerment to public health and the environment posed by the Landfill;
- c. Order Toa Alta to pay civil penalties for its violations of the 2017 Order;
- d. Award the United States its costs in this action; and
- e. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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